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DQ JAC #6

GROUP 3600

PATENT

Customer No. 22,852

Attorney Docket No. 06753.0386

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hajime ITO et al.

Application No.: 09/699,371

Filed: October 31, 2000

For: VEHICLE INFORMATION
PROCESSING METHOD,
APPARATUS THEREFOR
AND VEHICLE THEREWITH

Group Art Unit: 3661

Examiner: O. Hernandez

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OFFICE OF PETITIONS

ATTN: OFFICE OF PETITIONS

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

PETITION UNDER 37 C.F.R. §§ 1.144 AND 1.81(c)

Applicants hereby petition under 37 C.F.R. §§ 1.144 and 1.81(c) to request review of the Final Restriction Requirement mailed on January 15, 2002, in the above-noted application. It is Applicants' belief that no fee is due concurrently with the filing of the present petition, however, in the event a fee is due, please charge such fee to our Deposit Account No. 06-0916.

REMARKS**I. Background**

A. On October 31, 2000, Applicants filed the above-noted application, including claims 1-21. As originally filed, claims 1 and 11 were independent, with claims 2-10 dependent upon claim 1 and claims 12-21 dependent upon claim 11.

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B. On October 10, 2001, the Office mailed Paper No. 2, containing a restriction requirement under 35 U.S.C. § 121, requiring election of a single disclosed species among four species of the claimed invention.

C. On December 10, 2001, Applicants filed a response to Paper No. 2 electing to prosecute the species of Group I, but traversing the restriction requirement and requesting reconsideration and withdrawal of the requirement under 37 C.F.R. § 1.143. Applicants furnished reasons why the restriction requirement was deemed improper.

D. On January 15, 2002, the Office mailed Paper No. 5, in which the Examiner repeated and made final the restriction requirement.

E. On May 13, 2002, Applicants' representatives, the Examiner, and the Supervisory Patent Examiner conducted an interview to discuss the restriction and election of species requirements. That interview was memorialized in Paper No. 6, the Interview Summary prepared by the Examiner.

F. On July 2, 2002, the Examiner mailed an Office Action, in which the Examiner did not consider Applicants arguments against restriction or election of species.

II. Requirements for Restriction and Election of Species

Applicants respectfully request a review of the restriction and election of species requirements made Final in the last Office Action. As required by 37 C.F.R. §1.144,

reconsideration of the restriction requirement was made by Applicants. During the May 13, 2002 interview, Applicants' representatives pointed out that they interpreted the Office Action as requiring both restriction between inventions, as well as election of species. The Examiners pointed out that only an election of species requirement was intended to be imposed by the Office Action. Accordingly, the Examiners invited Applicants to submit arguments against the propriety of the election of species requirement. Thus, Applicants understood that withdrawal of the election of species requirement could be requested in Applicants' Amendment of June 13, 2002.

However, in the Office Action mailed July 2, 2002, Applicants' arguments for withdrawal of this requirement were not characterized by the Examiner as not persuasive and the Examiner required that Applicants submit a Petition to the Supervisory Patent Examiner for further consideration. This Petition is to request review of the election of species requirement.

First, Applicants disagree with the characterizations made by the Examiner in the previous Office Actions. Applicants respectfully submit that the claims were improperly construed by the Examiner to cover subject matter that conflicts with the explicit language of the claims. For example, claims 1-10 recite a "vehicle information processing method," (Emphasis added). However, the Examiner characterized these claims as "system" claims. Applicants respectfully request review on this issue, for the Examiner based the requirement of election of species on improperly characterized inventions.

Furthermore, in Paper No. 2, paragraph 2, the Examiner presents a narrative asserting how each invention "lacks" certain attributes of other inventions. Applicants

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do not agree with the Examiner's analysis, as so outlined, and submit that this analysis is improper for determining "patentably distinct species." In one such example, on Paper No. 2, page 3, the Examiner states that "Invention IV lacks Invention I." This analysis cannot be sustained, as all claims in Invention IV depend upon claims in Invention I. Therefore, Invention IV cannot "lack" Invention I.

Moreover, in order to establish "patentably distinct species" the Examiner's analysis is not adequate, as inventions "lacking" other inventions, alone, is not a sufficient basis for election of species under 35 U.S.C. §121. Applicants submit that the groupings of inventions characterized by the Examiner are not appropriate to sustain an election of species requirement.

In addition, there would be no burden on the Examiner to examine all of the claims in this application on its merits. M.P.E.P § 803 reads that "if the search and examination of the entire application can be made without serious burden, the examiner must examine it on the merits." (Emphasis added). Applicants respectfully request that this requirement should be applied in the present application to avoid unnecessary delay and expense to the Applicants and duplicative examination by the Patent Office.

In view of the above, Applicants respectfully request the withdrawal of the election of species requirement.

CONCLUSION

As demonstrated above, the Examiner improperly required an election of species of the present application. Therefore, with this Petition, Applicants respectfully request the Director to withdraw the election of species requirement imposed by the Examiner.

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Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 4, 2002

By: David W. Hill
for Reg. No. 24,014
Reg. No. 28,220

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